

Application of City of Chester  
Water Reservation No. 72583-41P

II. FINDINGS OF FACT

A. FINDINGS ON THE QUALIFICATION OF THE CITY OF CHESTER TO RESERVE WATER (Mont. Code Ann. § 85-2-316(1)(1991); ARM 36.16.107B(1)(a).)

1. The City of Chester is an incorporated municipality and a subdivision of the State of Montana. (Bd. Exh. 7-A, p. 1; Mont. Code Ann. § 85-2-316(1), ARM 36.16.107B(1)(a).)

2. The City of Chester has applied for a water reservation of 435 acre-feet/year (af/yr) of water with a maximum diversion rate of 1.0 cubic feet/second (cfs) to be diverted from the direct flow water of the Marias River using the city's existing pumping station located 14 miles southwest of Chester on the shoreline of Lake Elwell for year round use. (Bd. Exh. 7-A, pp. 6 and 49.) The City would store up to 92 af of this reservation water in the city's existing 30 million gallon holding reservoir (Bd. Exh. 7-A, p. 7.)

3. The City of Chester requested a water reservation to reserve water in the event the adjudication proceeding reduces the city's amount of water (as held by U.S. Bureau of Reclamation) to that which the city has historically or beneficially used (Bd. Exh. 7-A, p. 4.) The reservation would also provide a water diversion right in the event that the U.S. Bureau of Reclamation contract cannot be renewed. (Bd. Exh. 7-A, p. 4.) The City of Chester provides municipal water.

B. FINDINGS ON THE PURPOSE OF THE WATER RESERVATION APPLIED FOR BY THE CITY OF CHESTER (Mont. Code Ann. § 85-2-316(4)(a)(1991); ARM 36.16.107B(1)(b).)

4. The City of Chester seeks to provide municipal water for existing uses and for future growth in a cost-effective manner. Sound planning requires providing users with an adequate water supply. The term of the water reservation is to year 2025. (Bd. Exh. 7-A, p. 7.)

5. The purpose of the reservation is to provide the water for municipal and industrial uses. (Bd. Exh. 7-A, p. 4.) Municipal and industrial uses are beneficial uses of water in Montana. (Mont. Code Ann. § 85-2-102(2)(a), ARM 36.16.102(3); ARM 36.16.107B(1)(b).)

C. FINDINGS ON THE NEED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF CHESTER (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2)).

6. The city water pumping station at Lake Elwell presently provides up to 1.01 cfs of good quality water to the City of Chester. (Bd. Exh. 7-A, p. 21.) The reservation water requested would be delivered through the existing city water pumping station at Lake Elwell. (Bd. Exh. 7-A, p. 7.)

7. A reservation is the only means to obtain an early priority date for water that will be needed to meet existing uses and projected municipal growth. In the future, water may be appropriated by competing agricultural, industrial, and instream users. (Bd. Exh. 40, p. 249.)

8. It is important that the City of Chester have a water reservation to meet existing and future municipal and industrial water demands in order for the community to prosper and develop. (Bd. Exh. 7-A, p. 32.)

9. The City of Chester could be prevented from obtaining water from Lake Elwell and from using the existing city pumping station following expiration of the city water contract with the U.S. Bureau of Reclamation in the year 2002. (Bd. Exh. 7-A, p. 30; Perkins Dir., Tr. Day 2, p. 9, lines 23-25, and p. 10, lines 1-7.)

10. Before the City of Chester could exercise its reservation, it would have to obtain authorization from the U.S. Bureau of Reclamation (Perkins Dir., Tr. Day 2, p. 10.) Without a reservation, the City of Chester may have to go through a costly process of buying or condemning existing water rights to meet increasing demands. (Bd. Exh. 40, p. 249.)

11. Because the U.S. Bureau of Reclamation potentially may not continue the city's water contract, a water reservation for the City of Chester is needed. (§ 85-2-316(4)(a)(ii); ARM 36.16.107B(2).)

D. FINDINGS ON THE AMOUNT OF WATER NEEDED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF CHESTER (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3)).

12. The method of determining the amount of water requested for a water reservation by the City of Chester was based on a forecast of its future population to the year 2025 along with the estimated amount of water used per person. (Bd. Exh. 40, p. 35.) The methodology used by the City of Chester projected an average annualized (compounded population growth rate) of approximately .86 percent. (Bd. Exh. 40, p. 236.) The 1990 population of the City of Chester was 942. (Bd. Exh. 40, p. 236.) The City of

Chester's population forecast for the year 2025 was 1,418 people. (Bd. Exh. 40, p. 236.)

13. The populations recorded in the 1990 census indicate that over the past 30 years Chester has experienced a long term population decline of -.69 percent per year annualized (from 1,158 people in 1960 to 942 people at present). (Bd. Exh. 7-C, p. 3.) An additional 6 percent of residents who live outside the city limits are provided with city water services. (Bd. Exh. 7-A, pp. 17 and 18.)

14. The City of Chester presently loses a modest 5 percent of its diversions to evaporation and leakage. (Bd. Exh. 7-A, p. 34.) However, Chester average usage of 270 gallons per person daily is greater than the typical basin municipal use rate of 250 gallons per person daily. (Bd. Exh. 7-C, p. 3; Bd. Exh. 9-C, p. 3.) Daily water use rates would be expected to decline to 260 gallons per person following installation of additional water meters (Bd. Exh. 7-C, p. 3.)

15. Approximately 16 percent of the 426 city water service connections are metered at present. (Bd. Exh. 7-C, p. 4.) The City of Chester meters new connections to the water system. (Bd. Exh. 7-C, p. 4.)

16. The water use efficiencies associated with the municipal and industrial uses by the City of Chester are reasonable. (ARM 36.16.107B(3)(b).)

17. No other cost-effective measure could be taken within the reservation term to increase the use efficiency by the City of Chester and lessen the amount of water required for the purpose of the reservation. (ARM 36.16.107B(3)(b).)

E. FINDINGS THAT THE WATER RESERVATION APPLIED FOR BY THE CITY OF CHESTER IS IN THE PUBLIC INTEREST (Mont. Code Ann. § 85-2-316(4)(a)(iv)(1991); ARM 36.16.107B(4).)

18. Benefits of the City of Chester's water reservation were calculated on a willingness-to-pay basis. Chester used a \$3.00/1,000 gallons value. (Bd. Exh. 7-A, p. 44.) Helena municipal users are currently paying \$2.47/1,000 gallons. (Bd. Exh. 40, p. 253.)

19. The additional water provided by the water reservation will cost approximately \$1.69/1,000 gallons. (Bd. Exh. 7-A, p. 45.)

20. The direct benefits of the City of Chester's water reservation exceed the direct costs. (ARM 36.16.107B(4)(a).)

21. Indirect benefits of the City of Chester's reservation may include secondary economic benefits to the community and to the state, and expanding both the property and income tax base from increased population. (Bd. Exh. 7-A, p. 47.)

22. Indirect costs of the reservation may include loss of opportunity for other development and increased administrative costs. While not quantified these costs are minor. (Bd. Exh. 7-A, p. 46.)

23. There is no significant adverse environmental impact associated with the use of the City of Chester's water reservation. (Bd. Exh. 7-A, p. 47.) The effects of individual municipal water reservation depletions on water quality have not been quantified (Bd. Exh. 40, pp. 253-254), but should be very small. Resulting health risks have not been quantified. No other non-quantifiable benefits or costs were identified. (Bd. Exh. 7-A.)

24. Net benefits of granting the City of Chester's water reservation exceed the net benefits of not granting the water reservation and the project is economically feasible. (ARM 36.16.107B(4)(b); ARM 36.16.102(9).)

25. The City of Chester identified two alternative sources of water for future development, groundwater wells and water storage on Cottonwood Creek. These alternatives would not provide greater net benefits than the water reservation, (Bd. Exh. 7-A, pp. 45 and 46) and are not reasonable. (ARM 36.16.107B(4)(c).)

26. Failure to reserve water for future municipal and industrial use by the City of Chester is likely to result in an irretrievable loss of a resource development opportunity. (Bd. Exh. 7-A, p. 48; ARM 36.16.107B(4)(d).)

27. As conditioned, the City of Chester's water reservation will have no significant adverse impact to public health, welfare, or safety. (ARM 36.16.107B(4)(e).)

F. OTHER FINDINGS RELATING TO BOARD DECISION (Mont. Code Ann. § 85-2-316(3)(B), (4)(a)(iv)(b), (5), (6), and (9)(e)(1991); ARM 36.16.107B(5) through (8).)

28. The water reservation by the City of Chester will be used wholly within the state and within the Missouri River basin. (Bd. Exh. 7-A; ARM 36.16.107B(5) and (6).)

29. The City of Chester has identified a management plan for the design, development, and administration of its water reservation. (Bd. Exh. 7-A, p. 49.)

30. The City of Chester is capable of exercising reasonable diligence towards feasibly financing the project and applying reservation water to beneficial use in accordance with the management plan. (ARM 36.16.107B(7).)

31. The priority date of the City of Chester's water reservation is July 1, 1985. (§ 85-2-331(4).)

32. As conditioned, the City of Chester's water reservation will not adversely affect any senior water rights. (ARM 36.16.107B(8).)

33. The public interest in protecting domestic and stockwater rights with a priority date on or after July 1, 1985 and perfected prior to the final date of this Order outweighs the values protected by the municipal reservations.

### III. CONCLUSIONS OF LAW

1. City of Chester is a qualified applicant for a water reservation. (Mont. Code Ann. § 85-2-316(1)(1991).)

2. The purpose of the City of Chester's application is a beneficial use. (Mont. Code Ann. § 85-2-316(4)(a)(i)(1991); ARM 36.16.107B(1)(b).)

3. The need for the City of Chester has been established. Specifically, the City has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose of its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

4. The methodologies and assumptions used by the City of Chester are suitable but not accurate under present conditions. (ARM 36.16.107B(3)(a).) A more accurate population projection for the City of Chester is 1,100 people based on a .40 annualized growth rate. As modified, the City of Chester has established the amount of water needed to fulfill its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

5. Based on a weighing and balancing of the evidence, the reservation by the City of Chester as modified herein is in the public interest. (Mont. Code Ann. § 85-2-316(4)(a)(iv); ARM 36.16.107B(4).)

6. Upper Missouri River water reservations approved by the Board shall have a priority date of July 1, 1985. (Mont. Code Ann. § 85-2-331(4).) The Board may determine the relative priorities of all reservations. (Mont. Code Ann. § 85-2-316(a)(e).)

7. The Board may grant, deny, modify, or condition any reservation applied for. In no case may the Board make a reservation for more than the amount applied for. (Mont. Code Ann. § 85-2-316.)

8. The Board has no authority under the reservation statutes or any other statutes to determine, or alter any water right that is not a reservation. (Mont. Code Ann. § 85-2-316(14).)

#### IV. ORDER

1. Subject to all applicable modifications, conditions, and limitations (including but not limited to the conditions applied to consumptive use reservations in Exhibits A and B attached to this Order) the application of the City of Chester is granted for the following amount and flow of water: .93 cfs and 340 af/year.

2. The point of diversion and places of use are as set forth in the reservation application City of Chester and by reference are made a part of this Order.

3. The reservation is adopted subject to being perfected by December 31, 2025.

4. Relative to other reservations the priority date of the reservation shall be ahead of any other non-municipal reservation granted with a priority date of July 1, 1985. The reservation shall have equal priority with all other reservations granted to all municipalities.

5. Any and all liability arising from the reservation or the use of the reservation is the sole responsibility of the applicant. By granting such reservations, the Board on behalf of itself and the Department of Natural Resources and Conservation assumes no liability.